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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

HTC CORPORATION, HTC AMERICA, INC.,

Plaintiffs.

V.

ACACIA RESEARCH CORPORATION,
SAINT LAWRENCE
COMMUNICATIONS LLC.

Defendants.

Case No. SACV15-00378-CJC (DFMx)

ACACIA RESEARCH CORPORATION'S MOTION TO DISMISS

[Filed concurrently with Declaration of Ram; Rule 7.1 Disclosure; Request for Judicial Notice; and [Proposed] Order Granting the Motion to Dismiss]

Hearing:

Date: September 14, 201

Time: 1:30 p.m.

Ctrm: 9B

Judge: Hon. Cormac J. Carney

Action File: March 9, 2015

Trial Date: None Set

NOTICE OF MOTION

To all parties and their respective attorneys of record:

Please take notice that on September 14, 2015 at 1:30 p.m., or as soon thereafter as the matter may be heard, in this Court, located at United States District Court, Southern Division of the Central District, Southern Division, Dept./Room 9B, Santa Ana, CA 92701, defendant Acacia Research Corporation (“ARC”) will and hereby does move for an order to dismiss the Claims One through Five of the Complaint of plaintiffs HTC Corporation and HTC America, Inc. for want of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. In the alternative, ARC moves to dismiss Claims One through Five of the Complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

13 This motion is based upon this notice of motion and motion, the attached
14 memorandum, the concurrently filed request for judicial notice, the concurrently
15 filed declaration of Stephen L. Ram, and, and upon such other and further matters,
16 papers, and arguments as may be submitted to the Court at or before the hearing on
17 this motion.

18 This motion is made following the conference of counsel pursuant to Local
19 Rule 7-3 that took place on July 2, 2015.

Respectfully submitted,

Dated: August 7, 2015

**STRADLING YOCCA CARLSON & RAUTH,
P.C.**

By: /s/ Marc J. Schneider

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Stephen L. Ram

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CORPORATION**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs HTC Corporation (“HTC”) and HTC America, Inc.’s (collectively,
 4 “Plaintiffs”) preemptively filed this action for a declaration for non-infringement
 5 against the patent holder, Saint Lawrence Communications LLC (“SLC”), before
 6 SLC filed a patent infringement action against Plaintiffs. Although Plaintiffs and
 7 SLC have no jurisdictional ties to the Central District of California, the Complaint
 8 improperly joined SLC’s corporate parent, Newport Beach based Acacia Research
 9 Corporation (“ARC”), in an attempt to justify jurisdiction here. Plaintiffs’ tactic is
 10 nothing more than improper forum shopping. The Complaint against ARC fails as
 11 a matter of law and cannot be cured by amendment.

12 First, the Complaint fails to allege a case or controversy between Plaintiffs
 13 and ARC because there is no adverse legal interest between the parties. The law is
 14 clear – for a declaration of non-infringement, Plaintiffs may only sue a party that
 15 can affirmatively sue for patent infringement, *i.e.*, the patent owner or its exclusive
 16 licensee, such as SLC, because only the patent owner or licensee can enforce the
 17 patent against Plaintiffs. The Complaint does not allege any facts (nor can it) that
 18 ARC is the owner or exclusive licensee of the patents-in-suit. ARC’s relationship
 19 as a corporate parent of SLC is irrelevant because it is black letter law that a
 20 stockholder, such as ARC, does not own the assets of a company, such as SLC.
 21 Indeed, several courts, including one in the Central District, have dismissed ARC
 22 from nearly identical declaratory relief suits.

23 Second, the Complaint does not allege that ARC has undertaken any
 24 affirmative conduct to create a case or controversy. The Complaint attempts to
 25 conflate the actions of SLC with ARC, but the binding factual allegations are clear:
 26 SLC – not ARC – has enforced the patents in other lawsuits and entered into
 27 licensing discussions with Plaintiffs. There are no factual allegations suggesting

1 that ARC has ever attempted to enforce the patents against Plaintiffs or anyone
 2 else. This lack of affirmative conduct precludes a claim against ARC.

3 Third, apparently recognizing the absence of any actual case or controversy,
 4 Plaintiffs resort to a theory that SLC is the purported alter ego of ARC. However,
 5 the Complaint does not allege the critical touchstones for a unity of interest
 6 necessary for an alter ego finding such as inadequate capitalization, commingling
 7 of assets, or failure to respect corporate formalities. At most, the Complaint
 8 alleges unremarkable facts common in many parent-subsidiary relationships, such
 9 as common employees and officers and sharing of office space. Courts have
 10 routinely found such allegations insufficient. Moreover, the Complaint fails to
 11 allege that any fraud or injustice would result if SLC is not treated as an alter ego
 12 of ARC because a judgment against SLC would provide Plaintiffs with all of the
 13 declaratory relief they seek. On the other hand, a declaration against ARC for the
 14 patents-in-suit would carry no effect and serve only as an advisory opinion because
 15 ARC simply has no legal interest in the patents and therefore cannot sue Plaintiffs
 16 for patent infringement. ARC also cannot pierce its own corporate veil to sue
 17 Plaintiffs based upon SLC's patents. Courts within the Central District and other
 18 districts routinely grant motions to dismiss on this basis.

19 Accordingly, ARC respectfully requests that this Court grant its motion to
 20 dismiss the Complaint with prejudice.

21 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

22 **A. ARC Subsidiary SLC Acquires And Pursues Litigation To 23 Enforce The Patents-In-Suit.**

24 Based in Newport Beach, ARC is a publicly traded corporation listed on the
 25 Nasdaq Exchange. (Declaration of Stephen L. Ram ("Ram Decl."), Ex. 1.) ARC
 26 and its family of companies partner with inventors and other patent holders,
 27 ranging from individual inventors and universities to Fortune 500 companies, and

1 license those inventors' patented technologies to companies that are practicing the
 2 patents without the inventors' consent. (*Id.* at 3.) ARC is a corporate parent of
 3 SLC. (Compl. ¶ 5.)

4 According to the Complaint, SLC received assignments for U.S. Patent Nos.
 5 6,795,805, 6,807,524, 7,151,802, 7,260,521 and 7,191,123 (collectively, the
 6 "patents-in-suit") from patent holder VoiceAge Corporation ("VoiceAge") on
 7 December 29, 2013. (Compl. ¶¶ 8, 14.) The patents-in-suit teach the
 8 implementation of the Adaptive Multi-Rate-Wideband ("AMR-WB") speech
 9 compression standard for mobile handsets. (*Id.* ¶ 14.) The Complaint does not
 10 allege that ARC is the owner, exclusive licensee, or has any interest in the patents-
 11 in-suit. (*See* Compl. *passim*.) Indeed, the publically available records from the
 12 U.S. Patent and Trademark Office show that that the patents-in-suit were assigned
 13 from VoiceAge to SLC. (Ram Decl., Ex. 2.)

14 On April 2, 2014, SLC filed an action against Samsung Electronics Co. Ltd.
 15 in the Eastern District of Texas, alleging that Samsung's mobile handsets infringed
 16 the patents-in-suit. (Compl. ¶ 18.) On November 18, 2014, SLC filed an action
 17 against LG Electronics, Inc., also in the Eastern District of Texas, alleging that
 18 LG's mobile handsets infringed the patents-in-suit. (*Id.*)

19 SLC's German subsidiary, St. Lawrence GmbH ("SLC GmbH"), initiated
 20 patent infringement suits in Germany against Deutsche Telekom Deutschland
 21 GmbH and Vodafone GmbH ("German Defendants") based on German
 22 counterparts to the patents-in-suit (the "German Litigations"). (Compl. ¶ 15.) SLC
 23 GmbH alleges that the German Defendants infringe SLC's GmbH intellectual
 24 property, in part, by supplying HTC handsets to their customers that infringe the
 25 patents. (*Id.*)

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1 The Complaint does not allege that ARC is a party to the litigations in Texas
 2 or Germany. (*See Compl. passim.*)¹

3 **B. SLC And SLC GmbH Engage In Licensing Discussions With
 4 Plaintiffs.**

5 On December 9, 2014, HTC sent a letter to SLC GmbH to propose
 6 negotiations for a license of the subject patents in the German Litigations and/or
 7 the SLC patent portfolio as a whole. (*See Compl. ¶ 16.*) The letter referred to a
 8 SLC website that publishes license rates for the patents-in-suit. (*See id. ¶¶ 10, 16.*)
 9 On December 22, 2014, SLC GmbH responded requesting that HTC execute an
 10 enclosed Non-Disclosure Agreement (“NDA”) to pursue licensing discussions.
 11 (*Id. ¶ 17.*) HTC executed the NDA on December 26, 2014. (*Id.*)

12 The Complaint does not allege that ARC was a party to those
 13 communications or the NDA. (*See Compl. passim.*)

14 **C. Plaintiffs Serve Their Complaint After SLC Commences A Patent
 15 Infringement Suit.**

16 On June 2, 2015, SLC filed an infringement action on the patents-in-suit
 17 against HTC and HTC America, Inc. in the Eastern District of Texas (the
 18 “Infringement Action”).² ARC is not a party to that action. (Ram Decl., Exs. 10 &
 19 11.) Despite commencing this action on March 10, 2014, Plaintiffs waited over
 20 one-hundred (100) days to serve the Complaint on June 18, 2015, after SLC filed
 21 the Infringement Action. (*Id.*, Ex. 3.)

22 While ARC is not a party to any of the patent infringement actions, the
 23 Complaint still seeks declaratory relief against ARC purportedly based upon
 24 corporate control or alter ego theories. The Complaint alleges that SLC is an

25
 26 ¹ The Complaint and docket from these respective actions reflect that ARC is not a
 27 party to either of the Texas actions. (*See Ram Decl., Exs. 5-8; see also*
 concurrently filed ARC’s Request for Judicial Notice.)

28 ² *Saint Lawrence Communications LLC v. HTC Corporation et al.*, Case No. 2:15-cv-00919-JRG (E.D. Tex.).

1 indirect subsidiary of ARC, and that ARC and SLC share a business address or
 2 office in Plano, Texas. (Compl. ¶ 8.) On information and belief, the Complaint
 3 alleges that SLC has no employees or officers who are not shared with ARC and
 4 identifies two purported individuals. (*Id.* ¶¶ 8-9.) Finally, the Complaint alleges
 5 that SLC's website <<http://web.saintlawrencegmbh.com>> was registered by ARC
 6 and lists ARC's headquarters in Newport Beach as the sole registrant and
 7 administrator. (*Id.* ¶ 10.) "Based on all of these facts," the Complaint concludes
 8 that "Acacia Research exercises complete control over Saint Lawrence, which is a
 9 mere shell company and alter ego[.]" (*Id.* ¶ 11.) The Complaint alleges that
 10 "[a]llowing Acacia Research to avoid jurisdiction and venue through an alter ego
 11 shell company would be unjust," but the Complaint does not allege any particular
 12 fraud or injustice. (*Id.*)

13 ARC now moves to dismiss.

14 **III. ARGUMENT**

15 **A. Legal Standard**

16 Federal Rule of Civil Procedure 12(b)(1) provides for dismissal of a
 17 complaint for lack of subject matter jurisdiction. Because federal courts are courts
 18 of limited jurisdiction, it is "presumed that a cause lies outside this limited
 19 jurisdiction, and the burden of establishing the contrary rests upon the party
 20 asserting jurisdiction." *Vacek v. United States Postal Serv.*, 447 F.3d 1248, 1250
 21 (9th Cir. 2006).

22 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the
 23 claims asserted in a complaint. The issue on a motion to dismiss for failure to state
 24 a claim is not whether the claimant will ultimately prevail, but whether the
 25 claimant is entitled to offer evidence to support the claims asserted. *Gilligan v.*
Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997). Rule 12(b)(6) is read in
 26 conjunction with Rule 8(a), which requires a short and plain statement of the claim
 27

1 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). When
 2 evaluating a Rule 12(b)(6) motion, the district court accepts all material allegations
 3 in the complaint as true and construes them in the light most favorable to the non-
 4 moving party. *Moyo v. Gomez*, 40 F.3d 982, 984 (9th Cir. 1994). However, “the
 5 tenet that a court must accept as true all of the allegations contained in a complaint
 6 is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009);
 7 *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (stating that while a
 8 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed
 9 factual allegations, courts “are not bound to accept as true a legal conclusion
 10 couched as a factual allegation.”) (citations and quotations omitted).

11 Although the district court should grant leave to amend if the complaint can
 12 be cured by additional factual allegations, the district court need not grant leave if
 13 amendment of the complaint would be futile. *Thinket Ink Info. Res., Inc. v. Sun*
 14 *Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004). “When a proposed
 15 amendment would be futile, there is no need to prolong the litigation by permitting
 16 further amendment.” *Chaset v. Fleer/Skybox Int’l, LP*, 300 F.3d 1083, 1088 (9th
 17 Cir. 2002) (affirming trial court’s denial of leave to amend where plaintiffs could
 18 not cure a basic flaw — inability to demonstrate standing — in their pleading).
 19 Therefore, a court may decline leave to amend “if it determines that allegation of
 20 other facts consistent with the challenged pleading could not possibly cure the
 21 deficiency ...” *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010)
 22 (citation omitted).

23 **B. The Complaint Does Not State A Case Or Controversy Between**
 24 **Plaintiffs And ARC For Declaratory Relief.**

25 Plaintiffs improperly seek declarations of non-infringement against ARC for
 26 each of the patents-in-suit. The elements of the declaratory relief claim are co-
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1 extensive with Article III standing. The Declaratory Judgment Act provides in
 2 pertinent part:

3 In a case of actual controversy within its jurisdiction ... any court of
 4 the United States, upon the filing of an appropriate pleading, may
 5 declare the rights and other legal relations of any interested party
 6 seeking such declaration, whether or not further relief is or could be
 7 sought. Any such declaration shall have the force and effect of a final
 judgment or decree....

8
 9 28 U.S.C. § 2201(a). “[T]he phrase ‘case of actual controversy’ ... refers to the
 10 type of ‘Cases’ and ‘Controversies’ that are justiciable under Article III.”
 11 *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-27 (2007). A court’s
 12 exercise of jurisdiction must resolve a “substantial controversy, between the parties
 13 having adverse legal interests, of sufficient immediacy and reality to warrant the
 14 issuance of a declaratory judgment.” *Id.*; *Arris Group Inc. v. British Telecomm.*
 15 *PLC*, 639 F.3d 1368, 1374 (Fed. Cir. 2011).

16 **1. There is No Case Or Controversy Between Plaintiffs And
 17 ARC Because There Is No Adverse Legal Interest
 18 Between The Parties.**

19 **a. ARC Cannot Sue Plaintiffs For Infringement Because
 20 ARC Is Not An Owner Or Licensee Of The Patents.**

21 The Complaint does not (and cannot) allege that ARC owns or is the
 22 exclusive licensee for the patents-in-suit, and therefore, there can be no case or
 23 controversy. A proper defendant in a declaratory relief action for non-
 24 infringement is a party who has standing to sue as a plaintiff in an infringement
 25 action. *Top Victory Elecs. v. Hitachi Ltd.*, No. C 10-01579 CRB, 2010 U.S. Dist.
 26 LEXIS 125003, at *6-10 (N.D. Cal. Nov. 15, 2010) (citing *Fina Research, S.A. v.*
 27 *Baroid Ltd.*, 141 F.3d 1479, 1481 (Fed. Cir. 2008) (table case)). Standing in an

1 infringement action rests with the patent owner or the exclusive licensee. 35
 2 U.S.C. §§ 100, 281; *WiAV Solutions LLC v. Motorola, Inc.*, 631 F.3d 1257, 1264
 3 (Fed. Cir. 2010); *Spine Solutions, Inc. v. Metronic Sofamor Danek, USA, Inc.*, 620
 4 F.3d 1305, 1317-18 (Fed. Cir. 2010).

5 If a party lacks standing to sue for patent infringement because it has no
 6 legal interest in the patents-in-suit, then there is no case or controversy that would
 7 support jurisdiction under the Declaratory Judgment Act. *Fina Research*, 141 F.3d
 8 at 1480-81 (holding that “because [the defendant] had no legal interest in the two
 9 patents [in suit] and therefore could not bring suit for patent infringement, there
 10 was no actual controversy between [the parties] that would support jurisdiction
 11 under the Declaratory Judgment Act”); *GoDaddy.com, LLC v. RPost Commun.
 12 Ltd.*, No. CV-14-00126-PHX-JAT, 2014 U.S. Dist. LEXIS 170011, at *18 (D.
 13 Ariz. Dec. 9, 2014) (finding plaintiff failed to show that defendants had any right,
 14 title, or interest in the patents and, therefore, the court lacked subject matter
 15 jurisdiction over declaratory judgment claims against defendants); *Top Victory
 16 Elecs.*, 2010 U.S. Dist. LEXIS 125003, at *2 (same).

17 Here, the Complaint does not allege that ARC has a legal interest in the
 18 patents-in-suit to provide it with standing to sue Plaintiffs affirmatively for
 19 infringement. The Complaint does not allege that ARC owns the patents-in-suit.
 20 (See Compl. *passim*.) The Complaint also does not allege that ARC is the
 21 exclusive licensee of the patents. (See Compl. *passim*.) The lack of such
 22 averments is fatal to Plaintiffs’ declaratory relief claims.

23 Plaintiffs cannot cure these deficiencies. The Complaint admits that
 24 VoiceAge assigned the patents-in-suit to SLC. (Compl. ¶ 13.) SLC, thus, owns
 25 the patents-in-suit. (*Id.*) The simple fact is ARC has never had any ownership
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 27
 28

1 interest or license for the patents-in-suit.³ Therefore, there can be no case or
 2 controversy between Plaintiffs and ARC.

3 **b. A Parent Company Of A Patent Holder Is Not A**
 4 **Proper Defendant For A Declaratory Relief Claim.**

5 ARC's purported "control" as a corporate parent of SLC does not salvage
 6 the Complaint. The Federal Circuit and district courts across the country have
 7 consistently held that a parent corporation does not have standing for an
 8 infringement action where its subsidiary is the actual patent owner. *See Spine*
 9 *Solutions, Inc.*, 620 F.3d at 1317-19 (holding that parent and sister companies of
 10 actual patent owner lacked standing to sue for infringement); *Merial Ltd v.*
 11 *Intervet, Inc.*, 430 F. Supp. 2d 1357, 1361-63 (N.D. Ga. 2006) (granting motion to
 12 dismiss parent corporation's infringement suit; finding that "standing under the
 13 Patent Act cannot be based on the mere fact that Merial SAS is a wholly-owned
 14 subsidiary of Merial"); *Depuy, Inc. v. Zimmer Holdings, Inc.*, 384 F. Supp. 2d
 15 1237, 1239-41 (N.D. Ill. 2005) (granting motion to dismiss parent corporation's
 16 infringement suit; finding that "[f]or this is the garden-variety case ... in which suit
 17 is brought by an entity that does not own the property right that it is suing to
 18 enforce."); *Beam Laser Sys., Inc. v. Cox Commun'ns, Inc.*, 117 F. Supp. 2d 515,
 19 520-21 (E.D. Va. 2000) (granting motion to dismiss sole shareholder's
 20 infringement suit; finding that "[o]wnership of corporate stock does not create
 21 equitable title in that corporation's property."); *Site Microsurgical Sys., Inc. v. The*
 22 *Cooper Cos., Inc.*, 797 F. Supp. 333, 337-39 (D. Del. 1992) (denying motion for
 23 leave to join parent corporation in infringement suit; finding that "Site [subsidiary]
 24 holds legal title to the patents and it is a separate, operational corporation. Iolab

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27 ³ The records of U.S. Patent and Trademark Office reflect that ARC never received
 28 an assignment of the patents-in-suit. (Ram Decl., Ex. 2; *see also* ARC's Request
 for Judicial Notice.)

1 [parent] cannot be deemed to ‘effectively control the patent’ merely because it
 2 owns and exercises control over its subsidiary.”) (internal citations omitted).⁴

3 The decision in *Top Victory Electronics v. Hitachi Ltd.* is directly on point.
 4 There, Hitachi, Ltd. assigned a series of patents to two of its subsidiaries. 2010
 5 U.S. Dist. LEXIS 125003, at *2-3. Plaintiffs brought a declaratory relief action
 6 seeking a non-infringement determination against Hitachi and another company
 7 concerning Hitachi’s former patents. *Id.* at *1. Hitachi moved to dismiss for lack
 8 of subject matter jurisdiction; the court granted the motion. The court recognized
 9 that because only a party with legal title to a patent, *i.e.*, the owner or exclusive
 10 licensee, has standing to bring an infringement suit, only that party is a proper
 11 defendant for a non-infringement declaratory relief action. *Id.* at *7-9. The court
 12 found that Hitachi no longer had a direct interest in the patents because Hitachi had
 13 assigned all rights to the patents to its subsidiaries and retained no ownership
 14 interest or exclusive license. *Id.* at *9-10. The court also rejected plaintiffs’
 15 argument that Hitachi held equitable title to the patents through the parent-
 16 subsidiary relationship: “That a corporate parent’s subsidiary owns a patent is not
 17 enough to establish that the parent has rights in the subsidiary’s patents.” *Id.* at
 18 *11 (citation omitted).⁵

19 Indeed, it is black letter corporate law that a shareholder does not own the
 20 assets of a company. *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003) (“A
 21

22 ⁴ See also *Quantum Corp. v. Riverbed Tech., Inc.*, No. C-07-04161 WHA, 2008
 23 U.S. Dist. LEXIS 11348, at *7-8 (N.D. Cal. Feb. 4, 2008) (granting motion to
 24 dismiss parent corporation’s infringement suit, finding in part that “Quantum’s
 25 [parent company] control of its subsidiaries is insufficient to confer standing”); *Z Trim Holdings, Inc. v. Fiberstar, Inc.*, No. 06-C-361-C, 2007 U.S. Dist. LEXIS
 26 8569, at *11-13 (W.D. Wis. Feb. 5, 2007) (same).

27 ⁵ See also, e.g., *GMP Tech., LLC v. Zicam, LLC*, No. 08-C-7077, 2009 U.S. Dist.
 28 LEXIS 115523, at *5-6 (N.D. Ill. Dec. 9, 2009) (dismissing declaratory relief
 against parent company, where the parent company did not own or have an
 exclusive license for the patents); see also *Newmatic Sound Sys. v. Magnacoustics, Inc.*, No. C 10-00129 JSW, 2010 U.S. Dist. LEXIS 40018, at *4-10 (N.D. Cal.
 Apr. 23, 2010).

1 corporate parent which owns the shares of a subsidiary does not, for that reason
 2 alone, own or have legal title to the assets of the subsidiary.”); *U.S. v. Bennett*, 621
 3 F.3d 1131, 1136 (9th Cir. 2010) (“Today, it almost goes without saying that a
 4 parent corporation does not own the assets of its wholly-owned subsidiary by
 5 virtue of that relationship alone.”).⁶

6 Recognizing these principles, courts have granted ARC’s motions to dismiss
 7 in nearly identical declaratory relief actions. For example, in *Digitech Image*
 8 *Technologies, LLC v. Newegg Inc.*, Digitech, the owner of the patent in suit, sued
 9 Newegg for patent infringement. Case No. 2:12-cv-01688-ODW (MRWx), 2013
 10 U.S. Dist. LEXIS 63828, at *3 (C.D. Cal. May 3, 2013). ARC, Digitech’s ultimate
 11 parent company, was brought into that case when Newegg counterclaimed against
 12 Digitech and ARC seeking a declaratory judgment of non-infringement and
 13 invalidity. *Id.* Like Plaintiffs’ Complaint, Newegg’s counterclaim did not allege
 14 that ARC was the present owner, assignee, or exclusive licensee of the patent. *Id.*
 15 at *4. Newegg instead alleged that the parent-subsidiary relationship between
 16 ARC and Digitech created a controversy sufficient to confer standing under the
 17 Declaratory Judgment Act. *Id.* The *Digitech* court disagreed. Following *Top*
 18 *Victory Electronics*, the court held that ARC’s parent-subsidiary relationship with
 19 Digitech did not create any cognizable interest in the patent-in-suit—legal or
 20 equitable—and ARC therefore would lack standing to sue Newegg for either legal
 21 or equitable relief. *Id.* at *10-11 (following *Top Victory Elecs.*, 2010 U.S. Dist.
 22 LEXIS 125003, at *11; *see also* Ram Decl., Ex. 4 (*Sony Elecs., Inc. v. Digitech*
 23 *Image Techs., LLC*, No. 12-980-RGA (D. Del. Dec. 11, 2012) (order granting
 24 motion to dismiss for lack of subject matter jurisdiction in declaratory relief action;
 25

26 ⁶ *Buechner v. Farbenfabriken Bayer Aktiengesellschaft*, 154 A.2d 684, 686-87
 27 (Del. 1959) (“The shareholder’s essential right is to share in the profits and in the
 28 distribution of assets on liquidation. He has no interest of any specific assets of the
 corporation.”) (citations omitted); *see also Drilltec Techs., Inc. v. Remp*, 64 S.W.3d 212, 217 (Tex. App. 2001) (same; applying Texas law).

1 “Sony counters by arguing that Acacia controls Digitech. Assuming that is the
 2 case, it still does not make any sense to me that although Acacia cannot sue Sony
 3 to enforce the patent, Sony can sue Acacia to prevent enforcement of the patent.”).

4 Ultimately, ARC’s corporate “control” as a parent of SLC does not translate
 5 into ownership or equitable title to the patents-in-suit to create standing to
 6 affirmatively sue for infringement.

7 **2. The Complaint Does Not Allege ARC Took Any Affirmative
 8 Act To Enforce Any Right Concerning The Patents-In-Suit.**

9 Even if the Complaint alleged that ARC had an ownership interest in the
 10 patents-in-suit (which it does not), the declaratory relief claims still fail because
 11 there is no injury in fact. “[T]o establish an injury in fact traceable to the patentee,
 12 a declaratory judgment plaintiff must allege both (1) an affirmative act by the
 13 patentee related to the enforcement of his patent rights, and (2) meaningful
 14 preparation to conduct potentially infringing activity.” *Ass’n for Molecular
 15 Pathology v. United States PTO*, 653 F.3d 1329, 1343-48 (Fed. Cir. 2011) (internal
 16 citations omitted); *see also SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d
 17 1372, 1380-81 (Fed. Cir. 2007) (discussing affirmative act requirement). The
 18 Complaint does not allege that ARC took any affirmative acts to attempt to enforce
 19 the patents-in-suit against Plaintiffs to warrant declaratory relief.

20 First, SLC – and not ARC – initiated and is a party to the lawsuits discussed
 21 in the Complaint. The Complaint admits that SLC GmbH filed the German
 22 Litigations. (Compl. ¶ 15.) Despite the binding factual allegation, the Complaint
 23 still offers a misleading allegation that “Acacia Research has also taken legal
 24 action against HTC mobile handsets by, among other things, seeking to enjoin their
 25 sale and use through the German Litigations.” (*Id.* ¶ 19.) Yet, the Complaint does
 26 not (and cannot) allege that ARC is a party to the German Litigations. (*See* Compl.
 27 *passim*.) Similarly, the Complaint admits that SLC – not ARC – filed the Texas
 28

1 lawsuits against Samsung and LG. (*Id.* ¶ 18.) Despite those allegations, the
 2 Complaint offers another misleading allegation that “Acacia Research has also
 3 filed at least two lawsuits in the United States against competitors of HTC in the
 4 mobile handset market (*i.e.*, Samsung and LG).” (*Id.* ¶ 19.) Again, however, the
 5 Complaint does not (and cannot) allege that ARC is a party to those litigations.⁷
 6 (*See Compl. passim.*) Plaintiffs’ legal conclusions couched as factual allegations
 7 must be rejected. *See, e.g., Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.

8 Second, the Complaint does not allege that ARC ever attempted to enforce
 9 the patents. (*See Compl. passim.*) The Complaint admits that SLC GmbH asked
 10 HTC to execute an NDA to pursue licensing discussions covering the patents-in-
 11 suit. (Compl. ¶¶ 16-17.) The Complaint does not allege that ARC was a party to
 12 that communication or to the NDA. (*See Compl. passim.*)

13 As a result, the lack of any affirmative conduct by ARC precludes a claim
 14 against ARC. *See SanDisk Corp.*, 480 F.3d at 1380-81; *see also Innovative*

15 *Therapies, Inc. v. Kinetic Concepts, Inc.*, 599 F.3d 1377, 1382 (Fed. Cir. 2010)
 16 (affirming dismissal of a declaratory judgment claim because the complaint did not
 17 allege an affirmative act by the patent holder); *In re Netflix Antitrust Litig.*, 506 F.
 18 Supp. 2d 308, 318 (N.D. Cal. 2007) (defendant’s alleged notification of a patent
 19 did not support the affirmative act for a declaratory relief claim).

20 **C. The Alter Ego Theory Fails Because The Complaint Fails To**
 21 **Allege Essential Requirements And Such A Theory Would Still**
 22 **Not Create A Case Or Controversy.**

23 Plaintiffs’ alter ego theory is a last ditch effort to manufacture a basis for suit
 24 against ARC. The theory fails for two independent reasons. First, Plaintiffs do not
 25 allege facts remotely sufficient to establish the unity of interest element or detail
 26 any fraud or injustice that would occur should SLC not be found to be an alter ego

27 ⁷ The judicially noticeable records of those courts reflect that ARC is not a party to
 28 those actions. (Ram Decl., Exs. 5-8.)

1 of ARC. Second, even if Plaintiffs had sufficiently plead an alter ego claim, such
 2 an alter ego relationship would still not create a case or controversy between
 3 Plaintiffs and ARC because ARC cannot pierce its own corporate veil to sue based
 4 upon SLC's patents.

5 **1. Plaintiffs Do Not Allege Facts Sufficient To Establish An**
 6 **Alter Ego Relationship.**

7 The Complaint fails to allege the essential requirements of alter ego theory
 8 necessary to disregard corporate separateness. To establish alter ego liability, a
 9 plaintiff must establish: "(1) that there is such unity of interest and ownership that
 10 the separate personalities [of the entities] no longer exists and (2) that failure to
 11 disregard [their separate entities] would result in fraud or injustice." *Doe v.*
 12 *Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001); *Yellow Pages.com, LLC*, 780 F.
 13 Supp. 2d 1028, 1035 (S.D. Cal. 2011); *see also Veterinary Pathology, Inc. v. Cal.*
 14 *Health Lab., Inc.*, 116 Cal. App. 3d 111, 119 (1981).⁸ Alter ego is an extreme
 15 remedy, sparingly used. *Sonora Diamond Corp. v. Super. Ct.*, 83 Cal. App. 4th
 16 523, 539 (2000). "Conclusory allegations of 'alter ego' status are insufficient to

17 ⁸ Because the alter ego issue is not unique to patent law, the law of the regional
 18 circuit applies. *Wechsler v. Macke Int'l Trade, Inc.*, 486 F.3d 1286, 1295 (Fed.
 19 Cir. 2007) (citing *Insituform Techs., Inc. v. Cat Contr., Inc.*, 385 F.3d 1360, 1380
 20 (Fed. Cir. 2004)). The Ninth Circuit applies the law of the forum state, in this case
 California, to determine whether alter ego liability applies. *NetApp, Inc. v. Nimble*
 21 *Storage, Inc.*, No. 5:13-CV-05058-LHK (HRL), 2015 U.S. Dist. LEXIS 11406, at
 *16 (N.D. Cal. Jan. 29, 2015) (citing *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir.
 22 2003)); *Quigley v. Verizon Wireless*, No. C-11-6212 EMC, 2012 U.S. Dist. LEXIS
 23 75027, at *8 (N.D. Cal. May 30, 2012). In order to evaluate Plaintiffs' alter ego
 24 allegations, the Court need not decide whether to apply the law of the forum state,
 Texas law based upon the alleged alter ego SLC's incorporation, or Delaware law
 25 based upon ARC's incorporation because the result is the same applying the law of
any of the aforementioned jurisdictions. Under Texas law, a court will pierce the
 26 corporate veil when there is such unity between the parent corporation and its
 27 subsidiary that the separateness of the two corporations has ceased and holding
 28 only the subsidiary corporation liable would result in injustice. *Bollore S.A. v.*
Imp. Warehouse, Inc., 448 F.3d 317, 326 (5th Cir. 2006) (applying Texas law);
Gardemal v. Westin Hotel Co., 186 F.3d 588, 593 (5th Cir. 1999) (applying Texas
 law). Delaware courts apply a similar test. *See, e.g., Trans-World Int'l v. Smith-*
Hemion Prods., 972 F. Supp. 1275, 1291 (C.D. Cal. 1997) (applying law of
 California and Delaware); *Boston Scientific Corp. v. Wall Cardiovascular Tech.*
LLC, 647 F. Supp. 2d 358, 366-67 (D. Del. 2009).

1 state a claim. Rather, a plaintiff must allege specifically both of the elements of
 2 alter ego liability, as well as facts supporting each.” *Sandoval v. Ali*, 34 F. Supp.
 3d 1031, 1040 (N.D. Cal. 2014) (quoting *Neilson v. Union Bank of Cal.*, N.A., 290
 4 F. Supp. 2d 1101, 1116 (C.D. Cal. 2003)); *see Hoang v. Vinh Phat Supermarket,*
 5 *Inc.*, No. Civ. 2:13-00724 WBS GGH, 2013 U.S. Dist. LEXIS 114475, at *41
 6 (E.D. Cal. Aug. 12, 2013) (same).

7 **a. The Complaint Does Not Allege A Unity Of Interest.**

8 The Complaint’s allegations are insufficient to establish that there is a unity
 9 of interest between ARC and SLC. To satisfy the unity of interest element,
 10 Plaintiffs’ allegations must show that the “separate personalities [of the entities] no
 11 longer exist[.]” *Unocal Corp.*, 248 F.3d at 926; *see Inst. of Veterinary Pathology*,
 12 116 Cal. App. 3d at 119. In *United States v. Bestfoods*, 524 U.S. 51 (1998), the
 13 Supreme Court recognized that it is entirely appropriate (and common) for
 14 corporations to have wholly owned subsidiaries which are not the alter egos of
 15 their parent corporation. *Id.* at 69. “The mere fact of sole ownership and control
 16 does not eviscerate the separate corporate identity that is the foundation of
 17 corporate law.” *Katzir’s Floor & Home Design, Inc.*, 394 F.3d at 1149; *Sandoval*,
 18 34 F. Supp. 3d at 1040 (“Common ownership alone is insufficient to disregard the
 19 corporate form.”); *see also Gerritsen v. Warner Bros. Entm’t*, No. CV 14-03305
 20 MMM (CWx), 2015 U.S. Dist. LEXIS 84979, at *75 (C.D. Cal. June 12, 2015)
 21 (“As the Ninth Circuit and California courts have routinely observed . . . in and of
 22 itself, a parent’s complete control of a subsidiary does not show that there is an
 23 alter ego relationship between the two.”).⁹

24
 25 ⁹ *See also Nordberg v. Trilegiant Corp.*, 445 F. Supp. 2d 1082, 1102 (N.D. Cal.
 26 2006), abrogated on other grounds as stated in *Friedman v. 24 Hour Fitness USA*,
 27 *Inc.*, 580 F. Supp. 2d 985, 993 (C.D. Cal 2008) (“[I]t is clear that such routine
 28 control of a subsidiary by a parent is insufficient to support the contention that a
 subsidiary is a mere instrumentality.”); *Manila Indus. v. Ondova Ltd. Co.*, No. 07-
 55232, 2009 U.S. App. LEXIS 11914, at *3 (9th Cir. June 3, 2009) (finding sole
 ownership insufficient to show the unity of interest required to pierce the corporate
 veil, and exercise jurisdiction over defendant as an alter ego); *NetApp, Inc.*, 2015

1 While courts employ a totality of the circumstances approach, *Sonora
2 Diamond*, 83 Cal. App. 4th at 539;¹⁰ the Ninth Circuit has found that “critical
3 facts” needed to establish alter ego liability include: “inadequate capitalization,
4 commingling of assets, [or] disregard of corporate formalities.” *Katzir’s Floor &
5 Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1149 (9th Cir. 2004) (citing
6 *Tomaselli v. Transamerica Ins. Co.*, 25 Cal. App. 4th 1269 (1994)); *see also*
7 *Slottow v. Am. Cas. Co.*, 10 F.3d 1355, 1360 (9th Cir. 1993). None of these critical
8 factors are alleged in the Complaint. The Complaint makes no mention of SLC’s
9 capitalization, let alone if it is inadequately capitalized. (*See Compl. passim.*) The
10 Complaint also does not allege that any commingling of assets or failure to
11 observe corporate formalities. (*See Compl. passim.*)

12 Instead, the Complaint alleges two (2) purported facts that are insufficient to
13 establish alter ego liability. First, the Complaint suggests that SLC shares an office
14 with ARC in Texas and that SLC’s website lists the address of ARC’s headquarters
15 as the sole registrant and administrator.¹¹ (Compl. ¶¶ 8, 10.) This allegation is
16 insignificant. Shared office space and websites are unremarkable and common in
17 parent-subsidiary relationships. *Gerritsen*, 2015 U.S. Dist. LEXIS 84979, at *77
18 (“[T]he fact that a parent and subsidiary share the same office location, or the same
19 website and telephone number, does not necessarily reflect an abuse of the

20 U.S. Dist. LEXIS 11406, at *20-28 (holding alleged facts, including 100% control
21 of subsidiary by parent, are typical of parent-subsidiary relationship and, without
22 more, are not suggestive of a unity of interest).

23 ¹⁰ Delaware and Texas law use a similar totality of circumstances inquiry for the
24 unity of interest element. *See, e.g., Maloney-Refaie v. Bridge at Sch., Inc.*, 958
25 A.2d 871, 881 (2008) (applying Delaware law, listing factors); *Stewart &
26 Stevenson Serv-Tech, Inc.*, 879 S.W.2d 89, 107 (1994) (applying Texas law, listing
27 factors).

28 ¹¹ In the Complaint’s alter ego allegations, the Complaint alleges that VoiceAge
29 assigned the patents-in-suit to SLC approximately two weeks after SLC’s
30 formation. (Compl. ¶¶ 8 & 13.) It is unclear how an unaffiliated third party’s
31 assignment of patents or any other asset has any bearing on the factors considered
32 for the unity of interest element. Instead, the allegation only supports the simple
33 fact that SLC, not ARC, received the legal interest and title to the patents-in-suit.

1 corporate form and existence of an alter ego relationship.”); *NetApp, Inc.*, 2015
 2 U.S. Dist. LEXIS 11406, at *25 (“[T]he allegation that Nimble and Nimble AUS
 3 share a website and email is an administrative[] function. Shared administrative
 4 functions are not necessarily indicative of an alter ego relationship.”) (citation
 5 omitted); *see MMI, Inc. v. Baja, Inc.*, 743 F. Supp. 2d 1101, 1111 (D. Ariz. 2010);
 6 *Cherrone v. Florsheim Dev.*, Civ. No. 2:12-02069 WBS CKD, 2012 U.S. Dist.
 7 LEXIS 172778, at *11 (E.D. Cal. Dec. 4, 2012); *Sonora Diamond*, 83 Cal. App.
 8 4th at 539; *Inst. of Veterinary Pathology, Inc.*, 116 Cal. App. 3d at 119.

9 Second, the Complaint alleges that ARC and SLC share a common
 10 employee and a common officer. (Compl. ¶¶ 8-9.) However, it is entirely
 11 appropriate and expected for a parent company’s officers and directors to serve as
 12 officers and directors of its subsidiary, “and that fact alone may not serve to expose
 13 the parent corporation to liability for its subsidiary’s acts.” *Bestfoods*, 524 U.S. at
 14 69 (finding it is “normal” for a parent and a subsidiary to have identical officers)
 15 (citation omitted); *see, e.g., Gerritsen*, 2015 U.S. Dist. LEXIS 84979, at *76
 16 (“Overlap between a parent’s and a subsidiary’s directors or executive leadership
 17 alone, however, is not suggestive of a unity of interest”); *NetApp, Inc.*, 2015 U.S.
 18 Dist. LEXIS 11406, at *21-22 (same); *Sonora Diamond Corp.*, 83 Cal. App. 4th at
 19 548-49 (“It is considered a normal attribute of ownership that officers and directors
 20 of the parent serve as officers and directors of the subsidiary.”) (citation omitted).

21 Courts have rejected similar factual averments as insufficient to support the
 22 unity of interest element. In *Eclectic Properties East, LLC v. Marcus & Millichap*
 23 *Co.*, the court found plaintiffs’ alter ego allegations insufficient where plaintiffs
 24 alleged “a unity of interest and ownership between the corporation and its
 25 subsidiary based on the alleged facts that they occupy the same company
 26 headquarters, share the same principals, share many of the same employees and
 27 agents, and share the same corporate philosophy and operating principals.” No. C-
 28

1 09-00511 RMW, 2012 U.S. Dist. LEXIS 28865, at *16-17 (N.D. Cal. Mar. 5,
 2 2012). Plaintiffs also alleged that the parent company owned one hundred percent
 3 (100%) of the stock of the subsidiary and that the co-founders and co-chairman of
 4 the parent were the registered principals of the subsidiary. *Id.* Additionally,
 5 plaintiffs alleged that marketing materials referred to the companies
 6 interchangeably and that, as a result, plaintiffs had no way to discern with which
 7 entity they were dealing. *Id.* The district court found that such allegations were
 8 insufficient because they did not allege facts that could support a finding of
 9 inadequate capitalization, commingling of assets, or disregard of corporate
 10 formalities. *Id.* at *17-18. Further, plaintiffs did not allege any facts showing that
 11 an inequitable result would follow from respecting corporate separateness. *Id.* at
 12 *19.

13 Similarly, in *Sonora Diamond*, the Court of Appeal rejected alter ego and
 14 agency theories for personal jurisdiction, finding that Diamond's ownership and
 15 use of Sonora Mining to operate in California, interlocking directors and officers,
 16 Diamond's financial guarantees for Sonora Mining, and consolidated financing
 17 reporting, among other factors, taken individually or collectively were insufficient.
 18 83 Cal. App. 4th at 538-40, 546-51; *see also Katzir's Floor & Home Design*, 394
 19 F.3d at 1149-50; *Inst. of Veterinary Pathology*, 116 Cal. App. 3d at 117-20.

20 The Complaint, even when viewed in a light most favorable to Plaintiffs,
 21 reveals nothing more than a typical corporate relationship between a parent and
 22 subsidiary.¹² As in *Eclectic* and *Sonora Diamond*, these sparse allegations clearly

23 ¹² HTC and its affiliates have an interwoven corporate structure similar to the
 24 allegations Plaintiffs suggest would amount to alter ego. In HTC's publicly
 25 available Annual Report, HTC details that it controls more than fifty (50) direct
 26 and indirect subsidiaries (Ram Decl., Ex. 9 at 143), that the HTC companies have
 27 interlocking officers and directors, (*Id.* at 55, 61-63, 151), and several subsidiaries
 28 share the same offices, including that Plaintiff HTC America, Inc. shares offices in
 Bellevue, Washington with parent company HTC America Holding Inc. and sister
 companies HTC America Innovation, Inc. and HTC America Content Services,
 Inc. (*Id.* at 146.) And, apparently, HTC's board of directors exercises actual
 control of its subsidiaries by making decisions for the subsidiaries, including

1 are insufficient to plead “unity of interest.” District courts routinely dismiss alter
 2 ego claims based on similar allegations. *See Sandoval*, 34 F. Supp. 3d at 1040
 3 (“Plaintiffs’ alter ego allegations are too conclusory to survive a motion to dismiss.
 4 Not only are Plaintiffs’ allegations ‘on information and belief’ about a unity of
 5 interest between all Defendants conclusory, but Plaintiffs have also not adequately
 6 alleged that inequity would result from respecting the corporate form of
 7 Defendants.”); *Gerritsen*, 2015 U.S. Dist. LEXIS 84979, at *75-86 (concluding
 8 allegations that parent owned subsidiaries, shared board members, officers,
 9 employees and same office location and telephone number, and comingled funds
 10 with subsidiary were insufficient to allege unity of interest relationship).¹³

11 **b. The Complaint Does Not Allege Any Fraud Or
 12 Injustice.**

13 The Complaint also fails to plead a “fraud or injustice.” The second prong
 14 of the alter ego test requires the court to consider whether respecting the separate
 15 entities may result in fraud or injustice. *See Unocal*, 248 F.3d at 928; *see Sonora*
 16 *Diamond*, 83 Cal. App. 4th at 537 (“[T]he alter ego doctrine does not guard every
 17 unsatisfied creditor of a corporation but instead affords protection where some
 18 conduct amounting to bad faith makes it inequitable for the corporate owner to
 19 hide behind the corporate form.”). There can be no fraud or injustice where a
 20 plaintiff is not harmed by recognition of separate corporate identities. *See, e.g.,*
 21 *Mid-Century Ins. Co. v. Gardner*, 9 Cal. App. 4th 1205 (1992).

22
 23 “[a]dopt[ing] resolution on the capital injection from Company’s subsidiary HTC
 24 America Holding Inc. to its subsidiary HTC America Inc.” (*Id.* at 89 (Board of
 25 directors meeting dated May 6, 2014).)

26
 27 ¹³ *See also Nordberg*, 445 F. Supp. 2d at 1101-02 (dismissing alter ego claim;
 28 “Based on the lack of any pleaded facts supporting either the notion that inequity
 will result or that Trilegiant is a mere instrument of Cendant, plaintiffs’ alter ego
 claims must fail.”); *NetApp, Inc.*, 2015 U.S. Dist. LEXIS 11406, at *27-28
 (dismissing alter ego claim for failure to sufficiently allege unity of interest
 without reaching fraud or injustice prong); *j2 Global, Inc. v. Fax87.com*, Case No.
 CV 13-05353 DDP (AJWx), 2014 U.S. Dist. LEXIS 16786, at *10 (C.D. Cal. Feb.
 5, 2014) (same).

1 By the very nature of the Complaint's prayer, Plaintiffs simply cannot allege
 2 fraud or injustice. Plaintiffs only seek a declaration of non-infringement. There is
 3 no reason why SLC cannot "satisfy" such a potential judgment because SLC owns
 4 the patents-in-suit and (if Plaintiffs prevail on their claims) and SLC would be
 5 bound by a judgment that Plaintiffs' products do not infringe the patents-in-suit.
 6 (Compl. ¶ 8.) Plaintiffs cannot aver any harm by recognizing ARC and SLC's
 7 separate corporate identities, when Plaintiffs may receive all the relief they request
 8 from SLC. *See, e.g., Gerritsen*, 2015 U.S. Dist. LEXIS 84979, at *86 (dismissing
 9 complaint where court could not find that an inequitable result would follow if the
 10 corporate separateness of the defendant entities was not disregarded); *Neilson*, 290
 11 F. Supp. 2d at 1117 (pleading failed to allege injustice prong of alter ego theory
 12 where it stated that plaintiffs would suffer an inequitable result but "fail[ed] to
 13 allege facts supporting this statement"); *Square 1 Bank v. Lo*, Case No. 12-cv-
 14 05595-JSC, 2014 U.S. Dist. LEXIS 117524, at *10 (N.D. Cal. Aug. 22, 2014)
 15 (finding dismissal "warranted because Lo fails to satisfy the second requirement
 16 regarding inequity. The Complaint is devoid of any non-conclusory allegation as
 17 to why an inequitable result would follow if Holdings' acts are treated as those of
 18 Holdings alone.").¹⁴

19 Although Plaintiffs also allege that "allowing Acacia Research to avoid
 20 jurisdiction and venue through an alter ego shell company would be unjust," ARC
 21 is aware of no case ever holding that depriving Plaintiffs of their preferred forum

22 ¹⁴ *See also Orosa v. Therakos, Inc.*, No. C-11-2143 EMC, 2011 U.S. Dist. LEXIS
 23 93694, at *18-19 (N.D. Cal. Aug. 22, 2011) (granting motion to dismiss where
 24 plaintiff failed to plead any facts that would establish the second prong of the alter
 25 ego analysis; "Merely alleging that Plaintiff will suffer an inequitable result if J&J
 26 is not a defendant is not sufficient."); *Winner Chevrolet, Inc. v. Universal
 27 Underwriters Ins. Co.*, No. Civ. S-08-539 LKK, 2008 U.S. Dist. LEXIS 111530, at
 28 *9 (E.D. Cal. July 1, 2008) (granting parent company's motion to dismiss, finding
 that "Plaintiff has made no allegation that Universal [subsidiary] would, for
 example, be unable to satisfy a judgment such that injustice would result unless
 Zurich [parent] were joined as a defendant"); *Fru-Con Constr. Corp. v.
 Sacramento Mun. Util. Dist.*, No. Civ. S-05-583 LKK, 2007 U.S. Dist. LEXIS
 64017, at *11-15 & *15, fn.3 (E.D. Cal. Aug. 17, 2007) (collecting cases).

1 amounts to fraud or injustice that could support an alter ego determination. To the
 2 contrary, where a plaintiff attempts to exercise personal jurisdiction based upon
 3 alter ego allegations, courts have generally required a heightened pleading
 4 standard. *See, e.g., Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995)
 5 (“Disregarding the corporate entity is recognized as an extreme remedy” and
 6 “courts hold plaintiffs who invoke the alter ego theory of personal jurisdiction to a
 7 slightly higher burden”— namely, the presumption of corporate separateness must
 8 be overcome by clear and convincing evidence) (citing *Escude Cruz v. Ortho*
 9 *Pharmaceutical Corp.*, 619 F.2d 902, 905 (1st Cir. 1980); *accord Ryder Truck*
 10 *Rental, Inc. v. Acton Foodservices Corp.*, 554 F. Supp. 277, 279 (C.D. Cal. 1983)).
 11 Even in those situations, the fraud or injustice is separate and independent from a
 12 plaintiff’s desire to litigate in a particular venue, but instead requires an analysis of
 13 alleged fraud that would warrant a *prima facie* alter ego determination. *See, e.g.,*
 14 *Nucal Foods, Inc. v. Quality Egg LLC*, 887 F. Supp. 2d 977, 992-95 (E.D. Cal.
 15 2012) (finding no alleged misdeeds to satisfy fraud or injustice showing); *Calvert*,
 16 875 F. Supp. at 679-80 (same); *see also Sonora Diamond*, 83 Cal. App. 4th at 539-
 17 40 (same; stating that a challenge to “personal jurisdiction does not implicate the
 18 merits of the complaint, but the plaintiff … must present evidence to justify a
 19 finding that the requisite jurisdictional minimum contacts exists,” *i.e.*, fraud or
 20 injustice for an alter ego application).

21 Indeed, here, Plaintiffs are not even residents of this forum. (Compl. ¶¶ 2-
 22 3.) There is simply no precedent and no basis for Plaintiffs argument that
 23 Plaintiff’s inability to engage in forum shopping equates to fraud or injustice.
 24 Another Federal District Court is perfectly competent to adjudicate Plaintiff’s non-
 25 infringement claims. *See, e.g., Xoxide, Inc., v. Ford Motor Co.*, 448 F. Supp. 2d
 26 1188, 1192 (C.D. Cal. 2006) (explaining that forum shopping is discouraged); *Z-*
 27 *Line Designs, Inc. v. Bell’O Int’l LLC*, 218 F.R.D. 663, 665 (N.D. Cal. 2003)

1 (same). For each of these independent failures, ARC's motion to dismiss should
 2 be granted.

3 **2. Even If The Complaint Adequately Pled Alter Ego, There Is**
 4 **No Justiciable Case Or Controversy Because ARC Could**
 5 **Not Bring A Patent Infringement Suit By "Piercing" Its**
 6 **Own Corporate Veil.**

7 Even assuming, *arguendo*, that Plaintiffs had adequately pled an alter ego
 8 relationship (which they have not), the Complaint against ARC should still be
 9 dismissed. A parent company cannot bring a suit for patent infringement by virtue
 10 of an alter ego relationship with its patent holding subsidiary (*i.e.*, a theory of
 11 reverse piercing of the corporate veil). Therefore, a parent cannot be a proper
 12 defendant in a patent infringement declaratory judgment suit, even if its subsidiary
 13 is its alter ego.

14 “Alter ego is a limited doctrine, invoked only where recognition of the
 15 corporate form would work an injustice to a third person.” *Katzir’s Floor & Home*
 16 *Design*, 394 F.3d at 1149 (emphasis added); *Olympic Capital Corp. v. Newman*,
 17 276 F. Supp. 646, 655, 658 (C.D. Cal. 1967); *see also Mesler v. Bragg Mgmt. Co.*,
 18 39 Cal. 3d 290, 300 (1985).

19 “Generally, the corporate veil can generally be pierced only by an adversary
 20 of the corporation, not the corporation itself for its own benefit.” *Disenos*
 21 *Artisticos, E. Industriales, S.A. v. Costco Wholesale Corp.*, 97 F.3d 377, 380 (9th
 22 Cir. 1996); *see also Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816,
 23 819-20 (7th Cir. 2014) (holding that parent company Motorola could not pursue
 24 Sherman Act claim where its subsidiaries suffered the actual, immediate injury of
 25 an alleged price fixing scheme; stating that “Motorola wants us to treat it and all of
 26 its foreign subsidiaries as a single integrated enterprise, as if its subsidiaries were
 27 divisions rather than foreign corporations. But American law does not collapse

1 parents and subsidiaries (or sister corporations) in that way.”); *Coleman v. Estes*
 2 *Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1152-53 (C.D. Cal. 2010) (granting
 3 remand order, finding that parent and subsidiary could not “cast aside their chosen
 4 corporate structure in order to gain a significant jurisdictional benefit” of removal
 5 under CAFA); *Sun Microsystems, Inc. v. Hynix Semiconductor, Inc.*, 608 F. Supp.
 6 2d 1166, 1188-89 (N.D. Cal. 2009) (rejecting parent’s attempt to disregard its
 7 subsidiary’s corporate form in order to establish a claim in its own name).

8 As the court in *Quantum Corp. v. Riverbed Technologies Inc.* recognized,
 9 once a party avails itself of the benefits of the corporate form, it also bears the
 10 associated burdens and cannot disregard them. No. C-07-04161 WHA, 2008 U.S.
 11 Dist. LEXIS 11348, at *5-8 (N.D. Cal. Feb. 4, 2008) (citing *Aladdin Oil Corp. v.*
 12 *Perluss*, 230 Cal. App. 2d 603, 614 (1965)). There, a parent company ACN 120
 13 entered into a written agreement assigning all of its patents and the patents of its
 14 subsidiaries to Quantum. *Id.* at *4. However, one of the subsidiaries, Rocksoft,
 15 was not a party to that assignment agreement and did not otherwise assent to the
 16 assignment. *Id.* at *5. ACN 120 argued that the agreement effectively assigned
 17 Rocksoft’s patents because Rocksoft was ACN 120’s alter ego or, alternatively,
 18 ACN 120 was Rocksoft’s agent. *Id.* at *5-6. In other words, the parent company
 19 attempted to pierce its own corporate veil for its own interest. The court disagreed.
 20 The court found that ACN 120’s equitable ownership of Rocksoft does not mean
 21 ACN 120 could unilaterally transfer Rocksoft’s assets without Rocksoft’s assent.
 22 *Id.* at *6. See also *Opp v. St. Paul Fire & Marine Ins. Co.*, 154 Cal. App. 4th 71,
 23 76 (2007) (rejecting shareholder’s assertion that shareholder and company were
 24 alter egos of each other; stating that “An individual who has obtained the benefits
 25 of corporate limited liability will not be permitted to repudiate corporate existence
 26 just because the corporation has become an inconvenience.”); *Communist Party v.*
 27
 28

1 522 *Valencia, Inc.*, 35 Cal. App. 4th 980, 994-95 (1995) (rejecting parent
 2 company's claim that subsidiaries were its alter egos).

3 Here, ARC would not be permitted to pierce the corporate veil for its own
 4 benefit, *i.e.*, to bring a patent infringement suit against Plaintiffs based upon SLC's
 5 ownership of the patents-in-suit. ARC's presence in the action provides no
 6 additional relief and no further redress for Plaintiffs. That is because the prayed
 7 for declaration against ARC would be meaningless and amount to nothing more
 8 than an advisory opinion because ARC is not attempting to enforce and cannot
 9 enforce the patents as a matter of law against Plaintiffs.

10 Consequently, even if the Complaint had adequately pled that SLC is the
 11 alter ego of ARC, the alter ego allegations would still fail to create a justiciable
 12 case or controversy.

13 **D. Leave To Amend Would Be Futile.**

14 Where defects of a pleading cannot be cured by amendment, leave to amend
 15 is not necessary. *Telesaurus VPC*, 623 F.3d at 1003; *Thinket Ink Info. Res., Inc.*,
 16 368 F.3d at 1061; *Chaset*, 300 F.3d at 1088; *see, e.g.*, *United Bhd. of Carpenters &*
Joiners of Am. v. Bldg. & Constr. Trades Dep't, 770 F.3d 834, 845 (9th Cir. 2014)
 18 (affirming denial of leave to amend where the court could not "conceive of any
 19 new facts that could possibly cure the pleading."); *Mt. Hood Polaris, Inc. v.*
Martino (In re Gardner), 563 F.3d 981, 992 (9th Cir. 2009) (denial of leave to
 21 amend appropriate where proposed amendment would be futile); *Plumeau v.*
School District #40, County of Yamhill, 130 F.3d 432, 439 (9th Cir. 1997) (same).

23 Here, the declaratory relief claims all arise from SLC's ownership of the
 24 patents-in-suit. ARC has no direct ownership interest. Plaintiffs cannot plead any
 25 new facts to avoid that ARC does not own or have an exclusive license to the
 26 patents-in-suit. As such, Plaintiffs cannot amend the Complaint to state claim for
 27 declaratory relief of non-infringement of the patents-in-suit against ARC or present

1 a judiciable case or controversy. Accordingly, the Complaint should be dismissed
2 without leave to amend.

3 | IV. CONCLUSION

4 For the foregoing reasons, Acacia Research Corporation respectfully
5 requests that the Court dismiss the Complaint with prejudice.

Respectfully submitted,

Dated: August 7, 2015

STRADLING YOCOA CARLSON & RAUTH, P.C.

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ACACIA RESEARCH CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that: I am employed by Stradling Yocca Carlson & Rauth in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is: 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92660-6422. My email address is kolson@sycr.com. On August 7, 2015, I served the within document(s):

ACACIA RESEARCH CORPORATION'S MOTION TO DISMISS

X

By electronic service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

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I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on August 7, 2015, at Newport Beach, California

Kim Olson